

SERIAL 05172 SS ELECTION EQUIPMENT & SUPPLIES (NIGP CODE 57835)

DATE OF LAST REVISION: January 25, 2006 CONTRACT END DATE: December 31, 2010

CONTRACT PERIOD THROUGH DECEMBER 31, 2010

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTION EQUIPMENT & SUPPLIES (NIGP CODE 57835)**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **December 07, 2005 (eff. 01/01/2006)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

AS/mm
Attach

Copy to: Clerk of the Board
Mitch Etter, Elections
Mirheta Muslic, Materials Management



CONTRACT PURSUANT TO RFP

SERIAL 05172 -SS

This Contract is entered into this 1st day of January, 2006 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and Sequoia Voting Systems, a California corporation ("Contractor") for the purchase of a complete voting system service.

1.0 TERM

- 1.1 This Contract is for a term of five (5) years, beginning on the 1st day of January, 2006 and ending the 31st day of December, 2010.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum stated in Final Pricing, attached hereto and incorporated herein as Exhibit "A." Payment shall be made as set forth in Exhibit "A" Pricing.
- 2.2 Payment under this Contract shall be made in the manner provided by law. Invoices shall be prepared and submitted in accordance with the instructions provided on the purchase order. Invoices shall contain the following information: contract number, purchase order number, item numbers, description of supplies and/or services, sizes quantities, unit prices, and extended totals and applicable sales/use tax. The County is not subject to excise tax. All invoices issued in accordance with this Contract or any additional purchase order shall be paid within thirty (30) days of invoice date,

3.0 DUTIES

- 3.1 The Contractor shall perform all duties stated in the Agreed Scope of Work, attached hereto and incorporated herein as Exhibit "B."
- 3.2 Contractor shall perform services at the location(s) and time(s) stated in Exhibit "B," or in the purchase order requesting such services.
- 3.3 During the Contract term, County shall provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION AND INSURANCE:

4.1.1 INDEMNIFICATION

4.1.2 Indemnification.

4.1.2.1 By Contractor

Contractor hereby agrees to defend, indemnify, protect, and hold County harmless from and against any and all third party claims for damages (including, without limitation, court costs and reasonable attorneys' fees), incurred as a result of injury to any person or damage to property, including, without limitation, injury to Contractor's employees, agents or officers to the extent caused by the negligent or intentional acts of Contractor or its employees in performing under this Contract.

4.1.2.2 By County

County hereby agrees to defend, indemnify, protect, and hold Contractor harmless from and against any and all third party claims for damages (including, without limitation, court costs and reasonable attorneys' fees), incurred as a result of injury to any person or damage to property, including, without limitation, injury to County's employees, agents or officers to the extent caused by the negligent or intentional acts of County or its employees.

4.1.3 Insurance Requirements.

CONTRACTOR, at **CONTRACTOR'S** own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of **COUNTY**. The form of any insurance policies and forms must be acceptable to **COUNTY**.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of **COUNTY**, constitute a material breach of this Contract.

CONTRACTOR'S insurance shall be primary insurance as respects **COUNTY**, and any insurance or self-insurance maintained by **COUNTY** shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect **COUNTY**.

The insurance policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to **COUNTY** under such policies. **CONTRACTOR** shall be solely responsible for the deductible and/or self-insured retention.

COUNTY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. **COUNTY** shall not be obligated, however, to review such policies and/or endorsements or to advise **CONTRACTOR** of any deficiencies in such policies and endorsements, and such receipt shall not relieve **CONTRACTOR** from, or be deemed a waiver of

COUNTY'S right to insist on strict fulfillment of **CONTRACTOR'S** obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, shall name **COUNTY**, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against **COUNTY**, its agents, representatives, officers, directors, officials and employees for any claims arising out of **CONTRACTOR'S** work or service.

4.1.3.1 Commercial General Liability. **CONTRACTOR** shall maintain Commercial General Liability Insurance (CGL) and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

The CGL and the commercial umbrella coverage, if any, additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 10 01, and shall include coverage for **CONTRACTOR'S** operations and products.

4.1.3.2 Automobile Liability. **CONTRACTOR** shall maintain Automobile Liability Insurance and, if necessary, Commercial Umbrella Insurance with a combined single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to **CONTRACTOR'S** vehicles (including owned, hired, non-owned), assigned to or used in the performance of this Contract. If hazardous substances, materials, or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

4.1.3.3 Workers' Compensation. **CONTRACTOR** shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of **CONTRACTOR'S** employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

CONTRACTOR waives all rights against **COUNTY** and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by **CONTRACTOR** pursuant to this Contract.

In case any work is subcontracted, **CONTRACTOR** will require the Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of **CONTRACTOR**.

4.1.4 Certificates of Insurance.

- 4.1.4.1 Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. **BY SIGNING THE CONTRACT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF CONTRACT.**

In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of **CONTRACTOR'S** work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to **COUNTY** fifteen (15) days prior to the expiration date.

4.1.4.2 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

4.2 REQUIREMENT OF CONTRACT BOND:

Within ten (10) business days of execution of this Contract, the **CONTRACTOR** shall furnish a Performance Bond in the amount of Eight Hundred Thirty Four Thousand One Hundred Ninety Two and 00/100 (\$834,192.00) Dollars. The Performance Bond shall have a one (1) year term and shall be renewed annually by Contractor during the term of this Agreement. The following terms shall apply to the Performance Bond:

- 4.2.1 County shall not demand payment with respect to such financial assurance by reason of an alleged default by Contractor under this Contract until County shall have provided Contractor with written notice and any applicable cure period shall have expired without such default having been cured by Contractor.
- 4.2.2 In the event County seeks payment with respect to such financial assurance, the amount County shall demand, and which may be payable to County, shall be limited to those amounts actual and necessary costs incurred by County for the sole purpose of replacing goods or services to be provided by Contractor hereunder with those which are of reasonable equivalents.

The bond shall be made payable and acceptable to the Contracting Agency. In addition, the issuing surety company shall be rated "Best-A" or better as required by the Contracting Agency, as currently listed in the most recent Best Key Rating Guide, published by the A.M. Best Company.

4.3 LIMITATION OF CONTRACTOR'S LIABILITY:

CONTRACTOR'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES UNDER OR IN CONNECTION WITH THIS CONTRACT, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, LOSS, DAMAGE, COSTS OR EXPENSES CAUSED BY BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY OR ANY OTHER DUTY SHALL IN NO CIRCUMSTANCES EXCEED THE SUM OF EIGHT HUNDRED THIRTY FOUR THOUSAND ONE HUNDRED NINETY TWO AND 00/100 DOLLARS (\$834,192.00).

CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER ARISING, INCURRED BY COUNTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORT, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.4 INTELLECTUAL PROPERTY RIGHTS:

Each party shall retain its rights in any Intellectual Property Rights owned by or licensed to it prior to the Effective Date. All Development of Intellectual Property Rights whether or not developed by Contractor will be owned exclusively by Contractor; provided, however that County, provided it has not breached this Contract, shall have a non-exclusive license to the use of such Development Intellectual Property Rights solely as necessary for County to use the Product in the manner contemplated by this Contract. For purposes of this Contract, "Intellectual Property Rights" shall mean rights in inventions, know-how, patents, registered designs, design rights, trade names, trademarks, service marks, trade secrets, copyrights, semiconductor design rights, mask works and topography rights whether or not registered and including any application to register any of the same, and all rights or forms of protection of a similar nature or having equivalent effect which may subsist anywhere in the world. "Development Intellectual Property Rights" shall mean any Intellectual Property Rights created or coming into being during performance by Contractor under this Contract.

4.5 EXCUSABLE DELAYS:

- 4.5.1 Any failure by Contractor to perform any obligation of Contractor under this Contract shall not constitute a default by Contractor under this Contract if such failure arises out of causes beyond the reasonable control of Contractor or its subcontractors. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, terrorist attack, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.
- 4.5.2 Upon Contractor's request, County shall consider the facts and extent of any failure to perform the work and, if Contractor's failure to perform was without it or its subcontractors fault or negligence, the Contract, Exhibits and/or any other affected provision of this Contract shall be revised accordingly, subject to County's rights to change, terminate, or stop any or all of the work at any time.

4.6 CONFIDENTIALITY:

County acknowledges that during the course of Contractor's performance under this Contract, Contractor may disclose to County information concerning Contractor's pricing, products, trade secrets and other information which is competitively sensitive and proprietary, and which may be disclosed to County orally or in writing, in tangible or intangible form, including, without limitation, technical, operating, business, marketing and financial information, computer software and data, physical objects and samples (collectively, the "Information"). County acknowledges that disclosure of the Information would materially injure Contractor's competitive position in the marketplace. County therefore agrees, to the maximum extent permitted by law, to keep confidential and not to knowingly disclose any of the Information to any other person or entity, or use such Information for any purpose other than as expressly contemplated by this Contract. In the event County is required by law to disclose any of the Information, County shall give written notice to Contractor as soon as is practicable and, unless otherwise required by applicable law, at the earlier of (i) twenty (20) business days prior to disclosure or (ii) such longer period as may be required by applicable law.

4.7

NO THIRD PARTY BENEFICIARIES:

Contractor and County agree that this Contract is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third party beneficiaries of this Contract or any part or specific provision of this Contract, and no third party shall have any right to enforce this Contract or any provision hereof.

4.8 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona

For Contractor:

Jack Blaine
President
Sequoia Voting Systems, Inc.
7677 Oakport St, Suite 800
Oakland, CA 94621

4.9 ESCALATION:

Any requests for reasonable price adjustments must be submitted annually thirty (30) calendar days prior to the Contract anniversary date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Producer Price Index or by performing a market survey.

4.10 TERMINATION:

4.10.1 By County

4.10.1.1 County may unconditionally terminate this Contract for convenience by providing thirty (30) calendar days advance notice to the Contractor

4.10.2 By Contractor

Contractor may terminate this Agreement by written notice to County if:

4.10.2.1 County fails to pay any sum owing to Contractor within ten (10) days of date when due.

4.10.2.2 County fails, in the reasonable opinion of Sequoia, to cooperate with Sequoia to the extent reasonably necessary to permit Sequoia to fulfill its obligations under this Agreement.

4.10.2.3 Sufficient sums have not been appropriated by law to permit County to meet its payment obligations under this Agreement.

4.10.3 By Either Party

Either party may terminate this Agreement by written notice to the other if:

4.10.3.1 The other party breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice from the other party.

4.10.3.2 Either party enters into, or proposes to enter into, any bankruptcy or similar proceeding for the purpose of affording relief from creditors.

4.10.4 Effect of Termination

In the event this Agreement is terminated for any reason, all amounts owing to Contractor accrued prior to such termination shall be immediately due and payable. Such termination shall not affect the rights of the parties accrued prior to the date of termination.

4.10.5 License Agreement

Upon termination of this Agreement, the License Agreement and all of County's rights there under shall terminate. This Agreement shall terminate automatically on termination of the License Agreement.

4.10.6 Survival

In the event of termination, the provisions of Sections 4.3, 4.4, 4.6, 4.16, 4.17, 4.18, and 4.19 of this Agreement and Sections 2.14 and 2.18 of Exhibit B shall survive termination of this Agreement.

4.11 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.12 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach under this contract, which has not been cured within thirty (30) days after receipt of written notice of such breach from County.

4.13 ADDITION OF SERVICE:

The County reserves the right to add products and/or services provided under this Contract on the anniversary date to the extent of any increase in the number of voting units maintained and used by County. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County. During the term of this Agreement, Contractor shall be the exclusive provider to County of the goods and services to be provided hereunder.

4.14 SUBCONTRACTING OR ASSIGNMENT:

Contractor may not subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. Contractor may not assign this contract without the County's permission (which cannot be unreasonably withheld) to any entity owned or controlled, directly or indirectly, by Smartmatic International Corp.. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

4.15 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.16 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents reasonably necessary to document that Contractor's charges are in accordance with this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

4.17 AUDIT DISALLOWANCES:

If at any time County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.18 VALIDITY:

The invalidity, in whole or in part, of any provision of the Contract shall not void or affect the validity of any other provision of this Contract.

4.19 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.20 INTEGRATION

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR
SEQUOIA VOTING SYSTEMS, INC.

By: _____
AUTHORIZED SIGNATURE

PRINTED NAME AND TITLE

ADDRESS

DATE

MARICOPA COUNTY

BY: _____
DIRECTOR, MATERIALS MANAGEMENT

DATE

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:

MARICOPA COUNTY ATTORNEY

DATE

**Exhibit A
Pricing**

SERIAL 05172-SS

PRICING SHEET c75 20 51-b0604055

NIGP CODE: 57835

BIDDER NAME: Sequoia Voting Systems Inc.

F.I.D./VENDOR #:

BIDDER ADDRESS: 7677 Oakport Street, Suite 800, Oakland, CA 94621

BIDDERS PHONE #: 510-875-1200

BIDDER FAX #: 510-875-1226

COMPANY WEB SITE: sequoiavote.com

COMPANY CONTRACT (REP): Sheree Noell, Regional Sales Manager, Peter McManemy, Chief Financial Officer

Sheree Noell: 7677 Oakport Street, Suite 800, Oakland, CA 94621, Phone 510-610-6634 or 559-592-6601, Fax 510-875-1226 or 559-592-6601

EMAIL ADDRESS (REP): snoell@sequoiavote.com, pmcmanemy@sequoiavote.com

PRICING

BASE PROPOSAL: To furnish, deliver, install, provide, maintain and service hardware, software and training and technical assistance services as specified in this Contract the monthly support and services price during the term of this Contract and any extensions thereof:

\$69,516.00 per month

This price includes all costs for 75 Insights without ballot boxes, 5 Memory Pack Readers, Retrofits of 8 400-C Optech Ballot Tabulators, services, training and software/hardware as specified herein unless otherwise indicated on this page and includes any license fees for software which may not be included with hardware or products.

The base pricing assumes no significant change in the number of Optech III PE Eagles or Optech Insights owned and in use by the County calculated in June of each year during the preventative maintenance period. "Significant change" means the County's inventory of owned and in-use Eagles exceeds 1,400. Maintenance service on each new Insight added to the County's inventory of 1,200 at the inception of this Contract, but not exceeding 1,400 will result in an increase in the base monthly sum by:

\$15.00 per month per net additional Insight

The base pricing assumes no significant change in the number of Optech IV-C's or Optech 400-C's owned and in use by the County calculated in June of each year during the preventative maintenance period. "Significant change" means the County's inventory of owned and in-use Optech IV-C's or 400-C's exceeds 8. Maintenance service on each new Optech 400-C added to the County's inventory of 8 at the inception of this Contract will result in an increase in the base monthly sum by:

\$500.00 per month per net additional Optech 400-C

At the time County's inventory of owned and in-use Eagles/Insights exceeds 1,400 the parties will jointly review the maintenance services provided by CONTRACTOR and adjust the monthly maintenance charge to an amount mutually agreeable to both parties by written amendment to this Contract.

PRICE OF HARDWARE/SUPPLIES/PRODUCTS which may be ordered by the County but are not otherwise specified or included in the base price is as follows. These prices are guaranteed not to increase more than five percent (5) annual increase starting in 2007. These prices do not include freight or applicable sales taxes.

Optech Insights with Ballot Box	\$ 5,500.00
Optech Insights without Ballot Box	\$ 5,100.00
Memory Pack Readers (MPR's)	\$ 4,500.00
Memory Packs (Eagle)	\$ 250.00

SERIAL 05172-RFP

Memory Pack (Insight)	\$ 250.00
Optech 400-C	\$85,000.00
Eagle Audit Printing Tape	\$ 2.85
Insight Audit Printing Tape	\$ 2.85

Exhibit B
05172-SS

1.0 **INTENT:**

- 1.1 The intent of this contract is to perform the following:
 - 1.1.1 Retrofit and refurbish The County's Optech 4-Cs;
 - 1.1.2 License, furnish, deliver, install Sequoia Voting Systems election management system (EMS), ballot preparation system (BPS), ballot typesetting system (BTS), election tabulation program (WinETP), and accumulation and reporting software (AERO).
 - 1.1.3 Training for Maricopa County Staff;
 - 1.1.4 Technical assistance services for all elections conducted by the County;
 - 1.1.4 Purchase Insight precinct count units, memory pack readers and memory packs.
 - 1.1.5 Maintain and service hardware, software.
- 1.2 Definitions:
 - 1.2.1 Hardware: Optech 4-c, Optech 400-C, Optech Insight, Memory Pack and Memory Pack Reader
 - 1.2.2 Firmware: The Hardware incorporates software and logic which constitutes an Intellectual Property Right previously owned by Contractor pursuant to Section 4.4 of the Agreement.
 - 1.2.3 Software: Sequoia Voting Systems election management system (EMS), ballot preparation system (BPS), ballot typesetting system (BTS), election tabulation program (ETP) and accumulation and reporting software (AERO)
 - 1.2.4 Upgrades: Upgrades, enhancements to the Software

2.0 **SCOPE OF WORK:**

- 2.1 CERTIFICATION:

CONTRACTOR's Vote Tabulation System Software and Hardware shall be certified for use and sale by the Arizona Secretary of State's Office. All hardware and software provided by **CONTRACTOR** is subject to certification by the Arizona Secretary of State, the National Association of State Election Directors (NASED) and the Federal Elections Assistance Commission (EAC). The **CONTRACTOR** shall provide evidence of this certification upon execution of this Contract and when requested by the County.

CONTRACTOR's software and hardware shall have been satisfactorily tested by an approved, certified independent testing laboratory. Evidence of this successful testing shall be provided to the County upon request.
- 2.2 SOURCE CODE:

CONTRACTOR agrees to enter into a Third Party Escrow Services Agreement naming the Arizona Secretary of State as beneficiary. All application source code for the software used in the Vote Tabulation System, and all upgrades thereto shall be held in escrow under said Agreement. If **CONTRACTOR** ceases operations or becomes unable to maintain and support the software while under an obligation to do so, **CONTRACTOR** shall grant the Arizona Secretary of State authority to release the source code to the County, and the County shall have a limited license to

use the source code to perform **CONTRACTOR**'s obligations hereunder. The source code will remain **CONTRACTOR**'s property and may not be otherwise used by the County.

2.3 SOFTWARE AND HARDWARE:

CONTRACTOR agrees that if in Contractor's sole discretion, it elects to develop or produce Software enhancements to the Optech product lines for optical scan voting systems which Contractor elects, in Contractor's discretion, to provide to all of Contractor's maintenance service customers during the Contract period or any extension thereof, these enhancements will be provided to the County at no cost. Such Software enhancements and upgrades to **CONTRACTOR** software shall be licensed to the County, in accordance with this Contract. This Paragraph 2.3 does not obligate **CONTRACTOR** to develop any enhancement, upgrade or patch. All software provided to the County pursuant to this Paragraph 2.4 shall be subject to the license granted pursuant to Paragraph 2.6.5.

2.4 SYSTEM FUNCTIONALITY:

CONTRACTOR agrees that voting equipment (Software/Hardware) and services provided hereunder shall meet requirements of state law, including, but not limited to, the requirements of A.R.S. 16-406, 16-421 through 16-452, as such laws exist upon execution of this Contract. Should applicable laws, or the enforcement or interpretation of existing laws change in the future in such a manner as to require modifications to the Software, Upgrades or Firmware, all and Contractor determines, in Contractor's sole discretion, that such modifications are technically and commercially feasible, Contractor shall perform such modifications at County's expense and at a price to be agreed upon at that time. All modifications shall constitute Development Intellectual Property Rights owned by **CONTRACTOR** pursuant to Section 4.4 of the Agreement.

2.5 ITEMIZATION OF NEW SOFTWARE AND HARDWARE

The **CONTRACTOR** shall provide the following new Hardware and Software to the County including installation, testing and implementation of the Software and Hardware prior to acceptance by the County. Acceptance criteria for Software and Hardware are defined under Paragraph 3.14

- 2.5.1 Retrofit and refurbish eight (8) Optech 4-C's with the latest optical read heads, drums and other parts required to bring the units up to the Optech 400-C's parameters with full warranty as set forth in Paragraph 3.15, to be provided on or prior to May 1, 2006.
- 2.5.2 Provide a non-transferable, non-exclusive license for Sequoia Voting System's EMS/AERO 3.54.01, referred to as Sequoia Voting Systems Software in Paragraph 2.5.5 below, including all modules comparable to the County's current ETP/EMS/AERO/SPR/BDM/BTS at the inception of this Contract. For the purpose of this Contract, ETP means Election Tabulation Program, EMS means Election Management System (coding software and Eagle/Insight tabulation), BDS means Ballot Data System (election database for ballot preparation), and BTS means Ballot Typesetting System (ballot layout software).
- 2.5.3 Furnish and deliver:
 - 2.5.3.1 Seventy-five (75) Sequoia Voting Systems Optech Insight with modem and Memory Packs; Said Optech Insight units shall not include ballot boxes.
 - 2.5.3.2 Five (5) Memory Pack Readers
- 2.5.4 **CONTRACTOR** agrees that hardware and software and services provided herein are fully capable of processing the County's unique precinct splits, two-page ballots, and stream of data (County voter registration data files).

2.5.5 **CONTRACTOR** hereby grants to County a nonexclusive, nontransferable license during the period of this Contract and any extension thereof to use each item of software, the rights to which are owned by Sequoia Voting Systems, pursuant to and in accordance with the software license terms attached as Exhibit C to this Contract (the "License Terms"). This license of the Software shall be strictly in accordance with the License Terms. Except as expressly permitted by this Contract and the License agreement, the County's right to use an item of Sequoia Voting Systems Software shall not include the right to do any of the following:

2.5.5.1 Copy such item, in whole or in part (except for backup and archive purposes and provided that no more than one copy may be in existence at any one time for such purposes);

2.5.5.2 Reverse engineer, decompile, disassemble, re-engineer or otherwise create or attempt to create or permit, allow or assist others to create the source code or structural framework of such item;

2.5.5.3 Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Sequoia Voting Systems Software or its documentation, in whole or in part, to or by any third party;

2.5.5.4 Modify, enhance or otherwise change the Sequoia Voting Systems Software; or

2.5.5.5 Export the Sequoia Voting Systems Software without **CONTRACTOR's** prior written consent.

The County acknowledges and agrees that all right, title and interest in and to the Sequoia Voting Systems Software and its documentation is owned by **CONTRACTOR**, and that County has only a limited license to use such items during the period of this Contract and any extension thereof. Further, the County agrees not to disclose Sequoia Voting Systems Software to any third party. In the event County is required by law to disclose any Sequoia Voting Systems Software, County shall give written notice to Contractor at the earlier of (i) twenty (20) business days prior to disclosure or (ii) such longer period as may be required by applicable law. County shall include the copyright and proprietary rights notices which are set forth on the Sequoia Voting Systems Software and documentation on any permitted copies thereof.

2.6 ITEMIZATION OF MAINTENANCE, SUPPORT, TECHNICAL ASSISTANCE AND TRAINING SERVICES

2.6.1 Optech III PE (Eagles/Insights)

CONTRACTOR will provide preventive and maintenance service on all Optech 3 PE Eagles owned by the County, and additional Insights which may be acquired by the County. (See pricing page, Attachment A).

Preventive maintenance will be performed during the month of June of each year during the Contract period.

Maintenance service includes all parts, labor and out of pocket expenses for **CONTRACTOR's** technicians.

Maintenance service includes cleaning the unit, read head cleaning/testing/repair, electronics testing/repair/cleaning, replacement of printer ribbons, replacement of worn parts, one replacement paper printing tape per machine per year, any additional paper printing tapes shall be purchased at the unit rate listed on Attachment A., adjustments to meet factory specifications, and all other steps included in **CONTRACTOR's** preventive maintenance service program.

2.6.2 Optech 400-C

CONTRACTOR will provide preventive and maintenance service on all Optech 400-Cs owned by the County and new units that may be purchased through the term of this Contract.

Preventive maintenance will be performed during the month of June of each year during the Contract period.

Maintenance service includes all parts, labor and out of pocket expenses for **CONTRACTOR**'s technicians.

Maintenance service includes cleaning, read head cleaning/testing/repair, electronic testing/repair/cleaning, replacement of worn parts, adjusting tolerances to match factory specifications, and all other steps included in **CONTRACTOR**'s preventive maintenance service program.

2.6.3 Memory Packs

CONTRACTOR will provide servicing of all Memory Packs owned by the County and any additional Memory Packs that may be purchased during the term of this contract, including replacement of batteries prior to the primary elections in 2006 and 2008. **CONTRACTOR** is responsible for proper disposal of all old batteries.

2.6.4 Software Services

CONTRACTOR will provide technical and telephone service support during normal business hours (8:00am – 5:00pm PST) Monday through Friday for all Sequoia Voting Systems software licensed to the County pursuant to this Contract. **CONTRACTOR will provide after hours contact numbers for Sequoia Voting Systems hardware and software technicians.**

CONTRACTOR will provide installation and implementation of Sequoia Voting Systems Software identified in Paragraph 2.5.2. No unlicensed software will be installed on County computers.

CONTRACTOR will inform the County of any new software products added to its election system software or any new operating systems supported by **CONTRACTOR**.

2.7 ON-SITE SUPPORT SERVICES

CONTRACTOR will provide election cycle support for four (4) planned election dates each calendar year (2006, 2007, 2008, 2009, and 2010) and for the Presidential Preference Election in 2008. Any other on-site election services for an election will be provided by mutual agreement and negotiation of the parties of **CONTRACTOR**'s labor and material costs.

2.7.1 JURISDICTIONAL ELECTIONS. **CONTRACTOR** will provide support staff on site at the County for coding, testing, and support for election activities, specifically software support, coding and election day support for a period beginning up to fifty (50) days prior to the election date and up to five (5) days following each election, or until any recount is complete, whichever is later.

CONTRACTOR will provide one 400-C technician to the County for up to ten (10) days prior to and up to five (5) days following the election to support and operate the 400-Cs; to operate or support the SPR.; and to provide technical support for ballot tabulation center functions pertaining to **CONTRACTOR**'s hardware and software during this period.

CONTRACTOR will provide two (2) support personnel capable of providing technical assistance and phone support for the hardware and software covered under this contract to the County Boardworker Hotline room and transmission troubleshooting for Election Day.

- 2.7.2 **COUNTYWIDE ELECTIONS.** **CONTRACTOR** will provide support staff on site at the County for coding, testing, and support for election activities, specifically software support, coding and election day support for a period beginning up to sixty-five (65) days prior to the election date and up to ten (10) days following each election, or until any recount is complete, whichever is later.

CONTRACTOR will provide one 400-C technician to the County for up to thirty (30) days prior to and up to twenty (20) days following the election to support and operate the 400-Cs; to operate or support the SPRs and to provide technical support for ballot tabulation center functions pertaining to **CONTRACTOR's** hardware and software during this period.

CONTRACTOR will provide five (5) support personnel capable of providing technical assistance and phone support for the hardware and software covered in this contract to the County Boardworker Hotline room and transmission troubleshooting for Election Day.

"Countywide Elections" also encompass any special countywide election which may be called on any of the four statutory consolidated election dates.

- 2.7.3 **CONTRACTOR** recognizes that recounts can cause certain dates to be extended. The County acknowledges that such schedule changes may create an inability to keep all **CONTRACTOR** staff on site for the entire period following an election.
- 2.7.4 **CONTRACTOR** will provide the County with its plan to meeting staffing requirements of this Contract prior to execution of the Contract. The County will be notified prior to changes in staff specifically identified in this plan.
- 2.7.5 **CONTRACTOR's** employees and agents who perform services in the Central Tabulating Place or Computer Center, serve on a data processing board or take part in the actual testing, logic/accuracy functions, processing and counting of ballots, must meet the requirements of state law and the Secretary of State Procedures Manual and must be appointed and take the required oath before touching any ballot, computer or counting device.
- 2.7.6 All persons selected by the **CONTRACTOR** for work herein are subject to reasonable review and acceptance by the County to determine compliance with this Contract and applicable laws, rules and policies.
- 2.7.7 All persons assigned by **CONTRACTOR** to perform services hereunder will be adequately trained and supervised by **CONTRACTOR**.
- 2.7.8 **CONTRACTOR's** on-site election staff services will also include ballot marking for ballot tests, logic and accuracy testing, audit and any other testing required per factory specifications on the Eagles/Insights and 400-Cs.

2.8 TELEPHONIC OFF SITE SUPPORT

Support for all services in Section 2.0 shall be available to the County by telephone during normal business hours (8:00 am – 5:00 pm PST) Monday through Friday and 24 hours a day on Election Day. Further, **CONTRACTOR** shall provide the County with appropriate contact telephone numbers, including cell phone numbers for the resident vendor staff person and technical assistance, programming and services.

2.9 OFFICE LOCATION

The County agrees to provide **CONTRACTOR** with a work area or cubicle located at the ballot tabulation center for use by **CONTRACTOR's** staff only while performing services hereunder for the County.

2.10 DELIVERY:

Delivery of the hardware in Paragraph 2.6.1 is required F.O.B. **DESTINATION** Maricopa County Elections Department, 510 S 3rd Ave, Phoenix, Arizona 85003, Inside Delivery, freight pre-paid, unless otherwise agreed to in writing to another delivery location within Maricopa County. Unless shown on the pricing page, Exhibit A, there are no additional freight or handling charges that would be associated with special shipping and/or handling delivery.

2.11 SHIPPING:

The **CONTRACTOR** shall retain title and control of all hardware until they are delivered and accepted under Paragraph 2.14. All claims for visible or concealed damage shall be filed by the **CONTRACTOR**. The County will notify the **CONTRACTOR** immediately of any damage to the hardware and shall assist the **CONTRACTOR** in arranging for inspection.

The County is relieved from all risks of loss or damage to the hardware and software during periods of transportation (including transportation in connection with the return of hardware), installation and during the entire time the hardware and software is in the possession of the County prior to acceptance as set forth in Paragraph 3.14, except when loss or damage is due to the fault or negligence of the County.

2.12 INSTALLATION:

The **CONTRACTOR's** price shall include delivery and setup in complete operating condition. The County shall provide access to the site for the purpose of survey and review prior to installation prior to the specified installation date. The County will provide storage if needed to store hardware and parts only during the installation period. Installation and implementation of new tabulation hardware and software will be complete within fifteen (15) days of receipt by County.

2.13 TESTING AND ACCEPTANCE:

2.13.1 Time of Testing:

2.13.1.1 Within fifteen (15) days after delivery of the Hardware and Software to County in accordance with Section 2.10, County shall conduct those acceptance test described in (and in the order specified in) Documentation provided by Contractor (the "Acceptance Tests"). The County shall notify Contractor within five (5) days following completion of testing any failure of the Hardware and Software to complete the Acceptance Tests (a "Defect Notice"). A Defect Notice shall set forth with specificity the failure of the Hardware or Software to complete the Acceptance Tests. Contractor shall, within thirty (30) days from receipt of a Defect Notice, make any corrections necessary to cause the Hardware and Software to function in accordance with the Documentation. Within ten (10) calendar days of completion of such corrections, County shall retest the system in accordance with the procedure in this Section 2.13.1.1.

2.13.2 Acceptance:

The County shall be deemed to have accepted the Hardware and Software upon the earlier of (i) its receipt, installation and testing pursuant to Paragraphs 2.10 and 2.13, and a functional demonstration to designated County officials, or (ii) failure to timely deliver a Defect Notice to Contractor under Section 2.13.1.1 above. **CONTRACTOR** agrees to

either replace or repair any hardware or software that does not work according to the **CONTRACTOR's** specifications. The warranty period shall begin upon acceptance, as defined herein. All documentation shall be completed prior to final acceptance.

2.14 WARRANTY:

The warranty period shall begin upon acceptance pursuant to Section 2.13.A and end the 1st day of November, 2010. Contractor agrees to either replace or repair, at Contractor's sole option, any hardware or software that does not work according to the Contractor's documentation. Warranty replacement will be done at no additional charge of any nature to Maricopa County. The effective date on all warranties shall commence upon date of acceptance.

Warranty Disclaimer:

SEQUOIA DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, NOT EXPRESSLY AND SPECIFICALLY SET FORTH HEREIN INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. IN NO EVENT WHATSOEVER SHALL SEQUOIA BE LIABLE FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES AS A RESULT OF ITS BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT.

2.15 HARDWARE MAINTENANCE:

The **CONTRACTOR** shall provide for maintenance services as specified in the Technical Requirements of this Contract until the expiration of the Contract period or any warranty period, whichever is later. **CONTRACTOR** will provide all maintenance, service necessary to maintain the hardware and software in good operating condition. Maintenance service includes scheduled preventive maintenance (PM) based upon specific needs of individual machines as determined by the manufacturer and unscheduled on-call remedial maintenance.

Maintenance service will include lubrication, adjustments, replacement of parts and labor. All maintenance shall be performed by qualified maintenance engineers, familiar with all of the hardware installed at the County site. Contractor may use subcontractors in connection with the work performed under this Agreement, provided, however, the use of subcontractors shall not relieve Contractor of any of its obligations hereunder. Maintenance parts will be furnished on an exchange basis and the replaced parts become the property of the **CONTRACTOR**. The **CONTRACTOR** shall be prepared to submit certification of quality accompanying any rebuilt part.

The **CONTRACTOR** shall notify the County in writing of any individual hardware products that cannot in the **CONTRACTOR's** opinion be properly serviced due to excessive wear, deterioration or unavailability of parts. These products may be withdrawn from service upon 30 days prior notice and replaced at no charge.

LIMITATIONS:

1. This agreement does not require Contractor to provide maintenance services on the following:
 - A. products which have been repaired or altered by persons other than those expressly approved in writing by Sequoia,
 - B. products from which the serial numbers have been removed, defaced or changed,
 - C. products damaged as a result of accident, disaster, theft, vandalism, neglect, abuse, use of any product for a purpose other than the purpose for which it is designed or use not in accordance with instructions furnished by Sequoia,
 - D. products which have been subjected to physical, mechanical or electrical stress or alteration or any conversion by persons other than those expressly

- E. approved in writing by Sequoia, products used by any person other than Customer's employees or persons under Customer's direct supervision,

2.16 MANUALS:

One electronic copy of documentation, operation, user, installation, and hardware manual(s) and technical/descriptive literature, including schematic diagrams and technical reference manuals, shall be provided by **CONTRACTOR** for the software/hardware provided by the **CONTRACTOR**, including but not limited to the WinETP/EMS/AERO/SPR/BDM/BTS software. County shall have the right to print additional copies as needed for internal use only. Any new or updated user manuals or other documentation reflecting software or hardware changes, updates, modifications or revisions of previously issued manuals, or due to upgrades in **CONTRACTOR's** software products, shall also be provided to the County during the period of the Contract and the Warranty Period. Following these periods, the **CONTRACTOR** shall make such documentation and manuals available to the County at the same price charged other customers, subject to any **CONTRACTOR** discounts. All documentation and printed manuals provided by the **CONTRACTOR** may be reproduced by the County provided that such reproduction is made solely for internal use of County employees and that no charge is made to anyone for such reproductions. All documentation and printed manuals provided by the Contractor are subject to the confidentiality requirements of Section 4.6 of the Contract, and shall not be copied or reproduced other than as expressly provided for hereunder without the prior written consent of Contractor.

2.17 TRAINING:

The **CONTRACTOR** shall provide training necessary to completely train County personnel in the use and care of the software/hardware provided by **CONTRACTOR**. The County shall have the non-revocable right to request additional training at no cost if needed. The scheduling and scope shall be mutually agreed to between the County and the **CONTRACTOR** so as not to become unreasonable or excessive in scope.

2.18 PATENT, COPYRIGHT OR OTHER PROPRIETARY RIGHTS INDEMNITY.

The **CONTRACTOR** will defend at its own expense any claim, suit or action brought against the County to the extent that it is based on a claim that any of the SEQUOIA VOTING SYSTEMS hardware, SEQUOIA VOTING SYSTEMS software or SEQUOIA VOTING SYSTEMS services furnished hereunder infringe upon or violate any United States patent, trademark copyright or trade secret of any third party; and **CONTRACTOR** will indemnify the County against any loss, cost, damage, expense or liability arising out of such claim, suits, or action (including litigation costs and reasonable attorney fees), provided that: 1) **CONTRACTOR** shall be notified within ten (10) days of any notice of any such claim, suit or action; and 2) **CONTRACTOR** shall have sole control over the defense of any such claim, suit or action and all negotiations, settlement or compromise; and 3) should any SEQUOIA VOTING SYSTEMS hardware, SEQUOIA VOTING SYSTEMS software or SEQUOIA VOTING SYSTEMS services become or, in **CONTRACTOR's** opinion, be likely to become the subject of a claim or infringement, the County shall permit **CONTRACTOR**, at its option and expense, to (i) procure for the County the right to continue using the SEQUOIA VOTING SYSTEMS hardware, SEQUOIA VOTING SYSTEMS software or SEQUOIA VOTING SYSTEMS services; or (ii) to replace the SEQUOIA VOTING SYSTEMS hardware, SEQUOIA VOTING SYSTEMS software or SEQUOIA VOTING SYSTEMS services with non-infringing hardware, software or service which is acceptable to the County (such County acceptance shall be obtained in writing by the **CONTRACTOR**), or if neither (i) or (ii) is reasonably practicable, (iii) on not less than ninety (90) days prior written notice to County, repurchase the Infringing Component and refund to County an amount equal to the purchase price for the Infringing Component amortized on a three (3) year period on a straight line basis.

CONTRACTOR shall have no liability for, and the County shall indemnify and hold the **CONTRACTOR** harmless from and against any loss, cost, damage, expense or liability (including litigation costs and reasonable attorney fees) arising out of or relating to, a claim, suit or action described in this Section 2.18 which results from the use of any SEQUOIA VOTING SYSTEMS software if the county has not installed any upgrade or enhancement provided by SEQUOIA VOTING SYSTEMS, the use of any SEQUOIA VOTING SYSTEMS hardware or software in combination with other products not furnished or approved by **CONTRACTOR**, or modification or alteration of any SEQUOIA VOTING SYSTEMS hardware or software without the prior written consent of **CONTRACTOR**.

2.19 SAFETY STANDARDS:

Equipment and Materials: All items supplied by this Contract shall comply with the current applicable Occupational Safety and Health Standards of the Federal Government, State of Arizona, the National Electric Code and the National Fire Protection Association Standards.

Performance of Work: The **CONTRACTOR** shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with work performance under this Contract. The **CONTRACTOR** shall take all reasonable precautions for the safety or, and shall provide all reasonable protection to prevent damage, injury or loss, to all persons or equipment.

EXHIBIT C

LICENSE TERMS

1. DEFINITIONS

1.1 In this Agreement the following terms shall bear the following meanings:

“Documentation” the manuals, procedures and materials accompanying the Software.

“Software” the software listed in Exhibit A

“License Fee” the license fee payable by the County to the Contractor for the license of the Software herein as specified in Exhibit A.

“Specifications” the specifications for the Software set forth in the Documentation.

1.2 Words used in the singular shall include the plural and vice versa.

2. GRANT OF LICENSE

2.1 The Contractor grants to the County a personal, non-transferable and non-exclusive license to use the Software solely for the County’s conduct of elections in its jurisdiction and solely in conjunction with the Hardware at the County’s locations. The license shall take effect from the date of signature of this Agreement. This license may not be assigned or transferred by the County, voluntarily or by operation of law to any party without the Contractor’s express prior written permission in each instance. The County shall have no power to grant sub-licenses, prepare derivative works or modify the Software. Any use of all or any portion of the Software not expressly permitted by the terms of this Agreement is strictly prohibited.

2.2 Contractor shall retain ownership of and all copyright and other proprietary rights in the Software and any modifications or translations thereof. The County shall acquire only the limited license to the Software granted under the express terms of Section 2.1 above.

2.3 No right is granted to the County by this Agreement to use any identifying mark (such as, but not limited to, trade names, trademarks, trade devices, service marks or symbols, and abbreviations, contractions or simulations thereof) owned by, or used to identify any product or service of, Contractor or a corporate affiliate of Contractor. The County agrees that it will not, without the prior written permission of Contractor, (i) use any such identifying mark in advertising, publicity, packaging, labelling or in any other manner to identify any of its products or services, or (ii) represent, directly or indirectly, any product or service of the County as a product or service of Contractor or such an affiliate or is made in accordance with or utilises any information or documentation of Contractor or such an affiliate.

3. DELIVERY

3.1 The Software shall be supplied in executable form together with one back-up copy and one copy of Software documentation.

3.2 Delivery of the Software shall take place as agreed between the parties.

4. PROHIBITED ACTS

4.1 The County shall not (and shall not permit any other party to), without the prior written permission of the Contractor in each instance:-

- 4.1.1 Transfer or copy onto any other disk or hardware or otherwise copy the Software in whole or in part except for purposes of system backup;
- 4.1.2 Reverse engineer, disassemble, decompile, decipher or analyse the Software in whole or in part;
- 4.1.3 Alter or modify the Software in any way or prepare any derivative works of the Software or any part of parts of the Software;
- 4.1.4 Alter, remove or obstruct any copyright or proprietary notices from the Software, or fail to reproduce the same on any lawful copies of the Software; or
- 4.1.5 Use the Software other than on the Hardware at the County's locations..
- 4.1.6 Export, directly or indirectly, any Software to any country outside of the United States, or make disclosure of the Software to any foreign national where such disclosure would require an export license or other governmental permit.

5. RETURN OF SOFTWARE

Upon termination or expiration of this Agreement, the County shall (i) forthwith return to the Contractor all Software in its possession or control, or, if so requested by the Contractor, destroy all such Software and (ii) purge all Software from any electronic media, and certify in writing to the Contractor that it has been destroyed and purged.

SEQUOIA VOTING SYSTEMS, 7677 OAKPORT STREET, STE 800, OAKLAND, CA 94621

PRICING SHEET: C752051/B0604055/NIGP 57835

Terms:	NET 30
Vendor Number:	W000006475 X
Telephone Number:	510/875-1200
Fax Number:	510/875-1278
Contact Person:	Sheree Noell
E-mail Address:	snoell@sequoiavote.com
Company Web Site:	www.sequiavote.com
Certificates of Insurance	Required
Performance Bon Required	\$834,192.00
Contract Period:	To cover the period ending January 31, 2010.